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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1947.

No. 270

HARRISON PARKER, *Petitioner*,

vs.

PEOPLE OF THE STATE OF ILLINOIS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS AND BRIEF IN SUPPORT THEREOF.

HARRISON PARKER,
Pro Se.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

May it Please the Court:

Petition of Harrison Parker respectfully shows to this Honorable Court:

A.

Summary Statement of the Matter Involved.

1. Petitioner was the plaintiff in an action in the Circuit Court of Cook County against Jacob Shamberg, an Assistant States Attorney of Cook County. On January 2, 1945, the Court entered an order upon the petition of the defendant, directing petitioner to show cause why he should not produce for inspection and to be copied or photographed certain documents allegedly in his possession. The order did not set any time or place for the production of these documents (Rec. 5, Add'l. Abst. 9, 10). The

order further required petitioner to state by affidavit filed in Court whether any of the documents were in his possession or had previously been in his possession or power and when he parted with the same and what had become thereof.

2. Thereafter on January 4, 1945, the petitioner filed certain of the documents (Rec. 5, Add'l. Abst. 21-50) and also the required affidavit with the Clerk of the Court (Rec. 5, additional abstract, 18-20).

3. Defendant thereupon made a motion to hold petitioner in contempt of Court for having filed the affidavit and the documents on the ground that the documents contained scandalous, malicious and defamatory allegations and material. To this motion petitioner filed an answer which contained, among other things, a reiteration of some of the charges in the documents which were the basis of Shamberg's motion (Rec. 5, Add'l. Abst. 50-70). The Court found petitioner guilty of contempt of Court for filing a scurrilous affidavit and exhibits thereto and a scurrilous answer and exhibits thereto and sentenced petitioner to three months in the County Jail of Cook County (Rec. 5, Add'l. Abst. 14-18).

Stage of Proceedings at which Federal Questions were Raised.

1. (a) The constitutional questions raised herein were first raised by petitioner in the Trial Court in his answer to the motion of defendant to hold petitioner in contempt of Court (R 5, additional abstract, 78-79).

(b) The Trial Court did not pass on these questions. After the order appealed from was entered, petitioner applied for a Writ of Error to the Supreme Court of Illinois (Rec. 3, Abst. 77). The application was denied.

(c) Petitioner then raised these questions in an application for a Writ of Error to the Appellate Court of Illinois. The Appellate Court passed on these questions as follows:

> "but in the instant case Parker, by suing out a Writ of Error from this Court, waived all constitutional questions that might be involved * * *"

(d) Petitioner then raised the same constitutional questions by an Assignment of Error in an appeal from the Appellate Court to the Supreme Court of Illinois (Rec. 3, Abst. 81, Par. 29) and that Court disposed of these questions in the following language:

> "Certain constitutional questions are presented as grounds for reversal of the judgment. The record shows that plaintiff in error proceeded with this appeal from the amended order directly to the Appellate Court. Having first taken his case to that Court where errors were assigned of which Appellate Court had jurisdiction, he is deemed to have waived constitutional rights and they cannot now be considered."

Jurisdiction.

1. A final judgment has been entered by the highest Court of Illinois.

2. Jurisdiction of this Court is invoked under Judicial Act, Section 237b, as amended (344 (g), Title 28 of U. S. C. A.).

3. The following cases, among others, are believed to sustain the jurisdiction of this Court.

Schneider v. *Irvington*, 308 U. S. 147.
Bridges v. *California*, 314 U. S. 266.

4. The judgment of the Supreme Court of Illinois was entered on the 19th day of March, 1947, and petition for

rehearing was filed by petitioner and rehearing was denied on the 19th day of May, 1947. Thus the date of the judgment to be reviewed is the 19th day of May, 1947.

Questions Involved.

The constitutional questions involved are:

1. Whether the Fourteenth Amendment protects petitioner against a conviction for contempt of court, where the act deemed contemptuous was an act required of him by a court order.

2. Whether petitioner can be deemed to have waived his rights under the Fourteenth Amendment by appealing to the Appellate Court after the Supreme Court of the State had denied his application for Writ of Error, where petitioner raised the constitutional questions in the Appellate Court.

Opinion of the Court Below.

Docket No. 29605—Agenda 2—January, 1947.

The People of the State of Illinois, Defendant in Error,

vs.

Harrison Parker, Plaintiff in Error.

Per Curiam: By this writ of error plaintiff in error seeks the reversal of a judgment of the Appellate Court for the First District, affirming a judgment of the circuit court of Cook County, finding him guilty of a direct contempt of court and sentencing him to the county jail for ninety days. A second judgment of conviction for a later contempt in the same court was reversed by the Appellate Court. No review has been sought of the reversed judgment.

Plaintiff in error, Harrison Parker, was the plaintiff in a slander suit, pending for trial in the circuit court of Cook county, against one Jacob Shamberg. During the preliminary stages of the proceeding, Shamberg filed a verified motion for discovery of documents, asking for a rule against plaintiff in error requiring him to show cause why he should not produce for inspection, and to be copied and photographed, certain documents listed in the motion. The motion also requested that plaintiff in error be required to state by affidavit whether any of the specified documents were then or had been in his possession or power, and if not then in his possession or power, when he parted with them, and what became of them. The motion was apparently prepared and presented under the authority of paragraph (8) and (9) of Rule 17 of this court. (Ill. Rev. Stat. 1945, chap. 110, par. 259.17, subpars. (8), (9).) An order was accordingly entered by the court requiring plaintiff in error to produce the documents requested in the motion, and to make the required affidavit. On January 4, 1945, and within the time fixed by the order, plaintiff in error filed an affidavit with the clerk of the circuit court to which he attached as exhibits, five documents containing impertinent, insulting, malicious and scandalous charges against various judges of the circuit court of Cook county, the Appellate Court for the First District, and Justices of this court, as well as a number of other individuals prominent in public and private life. All of the courts of Illinois, including the court in which plaintiff in error was then a litigant, were charged with being corrupt and not open to the citizens of Illinois because of the corruption of the judges. Suggestion was also made that certain of the judges should be taken out and summarily shot or hanged. These exhibits purported

to be records, letters and other papers belonging to The Puritan Church, with which plaintiff in error appears to have been identified as an officer, and each of them bore his signature in some official capacity. It would serve no useful purpose to further detail here the contents of these exhibits since they are set out at length in the Appellate Court opinion. (*People* v. *Parker*, 328 Ill. App. 46.) That they contained impertinent, insulting, scandalous and contemptuous language reflecting on the integrity of the court cannot be denied.

Shamberg thereupon filed a motion directing the court's attention to the contents of the documents filed by plaintiff in error, and suggested that he be punished for contempt of court. Without permission of the court, plaintiff in error, on January 15, 1945, filed a long, verified answer to this motion in which he attempted to purge himself by asserting that the contents of the various documents were true. To this answer he appended his affidavit of January 4, 1945, together with the five exhibits attached to it. Thus, again, he presented to the court the same impertinent, insulting and scandalous matters contained in his first affidavit. After a hearing in open court, an amended order was entered on January 23, 1945, finding that the filing of the affidavit with its exhibits on January 4, 1945, and the filing of the answer on January 15, 1945, with its contents, constituted an obstruction of justice and abuse of the processes of the court; that it tended to lessen the dignity and authority of the court, and, by reason of such conduct, plaintiff in error was guilty of direct contempt of court. The affidavit, answer and exhibits were incorporated in the amended order by reference to the instruments as filed by plaintiff in error. The sentence to imprisonment in the county jail followed.

Plaintiff in error first contends that the documents in question were material to the issues in the slander suit against Shamberg, and the filing of them under the compulsion of an order of court could not be a contempt of court. By this argument plaintiff in error misconceives both the purpose and the extent of the court order. He had only to produce the documents for inspection and to be copied or photographed by the adverse party, under the direction of the court, and he would have fully complied with the order of court, as well as with the rule under which it was issued. Instead of complying with the order, and for reasons best known to himself, he chose to file them with the clerk of the court, thus spreading the contents of the documents on the records of the court. Plaintiff in error's suggestion that the documents were material to the main suit becomes an empty argument when it is considered that these instruments had never previously been presented to the court, and the court, therefore, had no knowledge of their contents. The materiality of the documents had never been passed on by the court.

The gist of the many wild, shocking, insulting and scandalous charges contained in the exhibits to the affidavit and in the answer filed by plaintiff in error is that all of the courts in Illinois, including the court in which his suit was then pending, are corrupt, and that the courts are not open to the citizens of Illinois because of the corruption of the judges. Contempt may be committed by incorporating impertinent, scandalous, insulting or contemptuous language reflecting on the integrity of the court in pleadings, motions and notice of motions. (*People* v. *Sherwin*, 334 Ill. 609.) The filing and presenting of the documentary exhibits in the circuit court constituted a direct contempt of that court.

The amended order of court, finding plaintiff in error guilty and sentencing him to the county jail for ninety days, recited the filing of the affidavit and exhibits on January 4, 1945, and the filing of the answer on January 15, 1945, as acts for which plaintiff in error was adjudged to be in contempt of court. It is urged that the sentence is a single one, while the judgment recites two separate and distinct offenses, and, for that reason, the sentence is erroneous and should be set aside. There is no merit in this contention. This is not in the nature of a criminal proceeding, and the rules regarding the trial of crimes by information or indictment have no application to proceedings for contempt. (*People ex rel. Rusch* v. *Kotwas*, 363 Ill. 336; *People ex rel Martin* v. *Panchire*, 311 Ill. 622.) The authorities cited by plaintiff in error, in support of his contention, pertain to criminal cases and are not applicable here.

Certain constitutional questions are presented as grounds for reversal of the judgment. The record shows that plaintiff in error proceeded with this appeal from the amended order directly to the Appellate Court. Having first taken his case to that court, where errors were assigned of which the Appellate Court had jurisdiction, he is deemed to have waived the constitutional questions and they cannot now be considered. *People* v. *Rosenthal*, 370 Ill. 244.

We are of the opinion that the judgment of the Appellate Court is correct, and it is affirmed.

Judgment affirmed.

B.

Reasons Relied on for Allowance of the Writ.

Your petitioner respectfully suggests the following reasons relied on for the issuance of the Writ:

1. The decision of the Supreme Court of Illinois deprives petitioner of his liberty without due process, in contravention of the Fourteenth Amendment.

The State Court, in holding that petitioner could be imprisoned for contempt because of his compliance with the Court order necessarily held that the Courts of Illinois are not enjoined from arbitrary and oppressive acts to the same extent as the executive or legislative branches of the government which holding is contrary to the prior rulings of this Court.

The holding, in effect, denies to petitioner his rights and privileges under the Fourteenth Amendment and necessarily holds that the Fourteenth Amendment does not apply in proceedings for contempt of Court.

2. The decision of the Supreme Court of Illinois denies petitioner his rights under the Constitution by holding that the same were waived, although on the same facts this Court may hold that petitioner, or other litigants following the same procedure in the Courts of Illinois as petitioner adopted, do not waive the safeguards of the Constitution.

Petitioner raised the constitutional questions here involved in the first instance in the Trial Court by written answer and thereafter brought an application for a Writ of Error to the Supreme Court of Illinois. When the application for the Writ was denied, he then appealed to the Appellate Court and in that appeal continued to press

these constitutional questions. It is this appeal to the Appellate Court which is deemed a waiver of his constitutional rights despite the fact that petitioner has pressed and asserted them in every forum.

Wherefore, Harrison Parker, your petitioner, respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Illinois, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case as numbered and entitled on its docket, and that said order of the Supreme Court of Illinois may be reversed by this Honorable Court and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just, and your petitioner will ever pray.

HARRISON PARKER,
Petitioner.

IN THE

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OCTOBER TERM, A. D. 1947.

No.

HARRISON PARKER, *Petitioner,*

vs.

PEOPLE OF THE STATE OF ILLINOIS.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

I.

Opinion of the Court Below.

The opinion of the Supreme Court of Illinois appears n full on page 4 of the petition submitted herewith.

II.

Jurisdiction.

This subject is treated on P. 3 of the petition for a writ f certiorari submitted herewith.

III.

Statement of the Case.

Petitioner was ordered to show cause why he should not roduce certain documents for examination. Petitioner led such of the documents as he had possession of with

the Clerk of the Court. The Court then decided that the documents were scurrilous and sentenced petitioner to jail for filing the documents.

IV.

Summary of Argument

Point 1.

1. Where a judge orders a litigant to perform an act, threatening him with punishment for contempt if he fails to perform it and then holds him in contempt for performing it, the litigant has been deprived of his liberty without due process of law.

Point 2.

2. Where a litigant raises constitutional questions in the Trial Court; appeals from the Court's decision to the Supreme Court of the State, and the Supreme Court of the State declines to hear his appeal, his subsequent appeal to the Appellate Court of the State, raising the same questions, does not constitute a waiver of his constitutional rights.

V.

Argument.

The bare statement that petitioner has been sentenced to jail for 3 months for complying with an order of Court and that his refusal to so comply would have brought the same result, requires no enlargement or argument, but of itself presents a case of so arbitrary, unfair and oppressive use of judicial power as to brand the proceeding

in violation of the Fourteenth Amendment (*Brinkerhoff-Faris Co.* v. *Hill*, 281 U. S. 673, 680). The inquiry here, must then turn to the question of whether or not the Supreme Court of Illinois, on any reasonable basis, could affirm this conviction.

The argument is that petitioner was not required to *file* the documents but only to *produce* them. It will be noted that the Trial Court had already ruled that the documents were relevant to the issues of the case then pending or might be (Rec. 3, Abst. 6). The order requiring the petitioner to produce, specified no place or time for the production of the documents (Rec. 5, Add'l. Abst. 9-10).

The question presented to petitioner was how to comply with the Court's order, namely; how and where to produce the documents. The Supreme Court of Illinois had already passed on this question in the case of *Lester* v. *The People*, 150 Ill. 408, wherein the Court held that a litigant could not be required to carry his records to his opponent's office, nor were they to be taken from his custody, the Court stating (p. 420):

> "The right to compel the production of books as evidence is clear. The right to compel to a submission of a general examination and inspection *out of the presence of the Court*, even though in the possession of one of its officers is entirely a different matter * * *. As before stated, its (the statute concerning discovery) purpose is met when the party is required to *produce in open court* all books and papers in his possession and power which contain evidence pertinent to the issue and reasonable opportunity is given for examination thereof *in the presence and under the direction of the court.*"

Thus petitioner acted upon authority of the Supreme

Court of Illinois in filing the required documents with the Court, since no other procedure had been laid out in the order to produce.

"The established practice is to require the documents to be deposited with an officer of the court * * *" *Martin* v. *Martin Co.*, (Del.) 102 Atlantic 373.

The proper place to produce documents for inspection is the office of the Clerk of the Court. *Beck* v. *Bohm*, 88 N. Y. S. 584.

Thus the opinion of the Supreme Court of Illinois requires us to amend our opening statement only to read as follows: Petitioner has been sentenced to jail for 3 months for complying with the order of Court in a manner prescribed by the Supreme Court of the State, the order itself being silent as to the method of compliance; and his refusal to comply with the order would have likewise resulted in his conviction. It is submitted that such a result is "offensive to the common and fundamental ideas of fairness and right." *Beth* v. *Brady*, 316 U. S. 455.

2. The Supreme Court of Illinois, however, avoids the necessary corollary to the foregoing, i. e., that petitioner was denied due process, by its holding that petitioner waived his constitutional rights by appealing to the Appellate Court. However, petitioner first appealed, by way of application for Writ of Error, to the Supreme Court of Illinois, but his application for the Writ was denied. Only then did he appeal to the Appellate Court, again specifying these questions in his Writ of Error. The Supreme Court of Illinois has already held that there can be no waiver of constitutional rights where they are asserted in both courts:

"We are unable to agree with the Appellate Court that the complainant, by the mere act of taking an

appeal to that court, must be deemed to have waived the question as to the validity of the statute. Without holding that he might not have so far waived or abandoned his claim in this respect as to have given that court jurisdiction, so far as its jurisdiction depended upon whether the validity of a statute was involved, we think it clear that in this case he made no such waiver. Whether the party appealing has waived a particular error must be determined from his assignments of error, and from his brief and argument on appeal. In both of these the complainant asserted and insisted upon the invalidity of the statute." *Chaplin* v. *Commissioners of Highways*, 126 Illinois 264, 274.

Here again, petitioner was given no choice. Had he failed to press his appeals he would have been deemed to have waived his right to due process under authority of *Frank* v. *Mangum* 237 U. S. 309. Having pressed his appeals, first to the Supreme Court and thereafter to the Appellate Court and thereafter to the Supreme Court again, the Supreme Court of Illinois holds he has waived his rights. The holding that he thus waived his rights is, in itself, a denial of due process of law.

CONCLUSION.

Petitioner respectfully submits that this case calls for the exercise by this Court of its supervisory powers in order that an interpretation of the 14th Amendment may be had covering the points herein involved, and to do justice in this case, and to such end prays for a Writ of Certiorari to reverse the judgment of the Illinois Supreme Court.

Respectfully submitted,

HARRISON PARKER
Pro Se